PP v. CHUAH CHIN HOE

HIGH COURT MALAYA, KUALA LUMPUR
MUNIANDY KANNYAPPAN J
[CRIMINAL TRIAL NO: WA-45B-10-10-2021]
1 JANUARY 2026

Abstract – *Where a murder occurs within a private, shared dwelling, and the prosecution establishes that the accused was the last person with the deceased in a secure environment, ie, the 'last seen' doctrine, the burden of providing a plausible explanation shifts to the accused. Failure to provide such an explanation, combined with a robust chain of circumstantial evidence – encompassing motive, opportunity, and means – is sufficient to prove guilt beyond reasonable doubt, provided the cumulative effect of the evidence excludes any other reasonable hypothesis.*

CRIMINAL LAW: *Offence – Murder – Death by smothering – Prosecution relied on circumstantial evidence to establish case – Cumulative effect of evidence – Chain of evidence – Whether pointing inexorably to guilt of accused – Whether prosecution established motive, opportunity and means – Whether guilt proved beyond reasonable doubt – Penal Code, s. 302*

EVIDENCE: *Circumstantial evidence – 'Last seen' doctrine – Death by smothering – Murder occurred in shared dwelling – Deceased last seen with accused in locked bedroom – Failure of accused to provide plausible explanation – Whether gave rise to strong presumption of guilt – Whether defence of third-party intruder mere conjecture*

The accused was charged with the murder of his wife, an offence under s. 302 of the Penal Code. The offence allegedly occurred at their residence. The prosecution relied on a chain of circumstantial evidence to prove its case beyond reasonable doubt. At the close of the prosecution's case, a *prima facie* case was established based on the following: (i) the pathologist ('SP11') proved the cause of death was asphyxia consistent with smothering. Her evidence was supported by the testimony of an odontologist and the post-mortem report. Their testimonies stood unrebutted; (ii) injuries to the deceased's lips were consistent with strong pressure from a soft blunt object, such as a blanket and there were no injuries consistent with legitimate cardiopulmonary resuscitation ('CPR') attempts; (iii) evidence from the couple's children established that the deceased retired to the bedroom with the accused on the night of the incident. No other person was seen entering or exiting the room until the deceased was found dead the next morning. Moreover, individuals present in the household were the couple and their children; (iv) the prosecution adduced evidence of a soured marital relationship and distress; a pending divorce; financial instability due to the gambling habit of the accused; and the fact that the accused was the sole

beneficiary of the deceased's Employees Provident Fund's ('EPF') savings totalling RM433,079.90; (v) the deceased had informed her children of her intent to divorce the accused and had filed for divorce; and (vi) investigations revealed no signs of a break-in at the condominium. The defence focused on these contentions to create reasonable doubt: (i) there was no evidence on the identity of the deceased *vide* proper identification documents; (ii) there were gaps in the close circuit television ('CCTV') footage and the possibility of entry *via* balcony suggested an intruder could have committed the crime; (iii) the presence of another individual's sperm in the deceased's body and alleged threats from a gangster prior to her death; (iv) the recording was time-based rather than motion-based, suggesting that the CCTV footage was incomplete, missing crucial timeframes and contained time gaps during the material window of the charge; (v) the accused's presence at the casino was work-related; and (vi) his attempts to resuscitate the deceased demonstrated a lack of criminal culpability, thus pointing to his innocent conduct. After the defence had closed its case, the prosecution applied to call rebuttal evidence to rebut the findings of the defence's CCTV expert ('SD2') regarding the CCTV recordings.

Held (finding accused guilty and sentencing him to 30 years' imprisonment):

(1) There was no failure by the prosecution to prove the identity of the deceased. It was perfectly clear that reliance was on the sons' testimony identifying the victim as their mother, despite the lack of formal police documentation, *to wit*, identity card or death certificate or fingerprint analysis. The combined oral or verbal evidence from the family deemed cogent and sufficient to prove identity. (para 25)

(2) The CCTV arguments raised by the defence was unpersuasive. While SD2 suggested the recording was incomplete, he admitted that he did not physically inspect the system's hardware, *ie*, NVR or hard disk. Conversely, the prosecution demonstrated that the CCTV file numbers were in sequence, strongly indicating that no tampering or editing had occurred. The theory of an intruder entering *via* a 12-inch gap through the balcony or during gaps in the footage was dismissed as mere conjecture. There were no signs of a break-in. (para 26)

(3) The accused was the last person with the deceased in a locked bedroom before she was found dead the next morning. Under this doctrine, when a murder occurs in a shared dwelling, the husband must explain how the injuries occurred. Failure to offer a plausible explanation gave rise to a strong presumption that the accused was responsible. The accused had failed to provide a plausible explanation and was instead fabricating an alibi and story of a third-party intruder into their bedroom. Hence, the

inference was that the accused had committed the act of killing the deceased alleged against him, and also led to a strong presumption against him. The presence of sperm or outside threats lacked a direct link to the specific act of murder in the bedroom. (paras 27 & 28)

(4) The credibility of the accused was severely undermined by material contradictions between his police statement and his witness statement regarding his wake up and return times on the morning of the incident. His initial lie regarding his last casino visit, claiming April instead of May, suggested an attempt to hide a financial motive. These inconsistencies suggested a blatant lie and a deliberate attempt to fabricate an alibi. (para 29)

(5) Calling rebuttal evidence under s. 425 of the CPC was not a tool to be used willy-nilly. It was only appropriate when the evidence tendered by the defence was unforeseeable by the prosecution at the outset. The documentary proof, exhs. D44 and D45, commented upon by SD2 had already emerged during the prosecution stage of the trial. Therefore, the basis of the defence's testimony was not a surprise that necessitated rebuttal. The prosecution's arguments focused heavily on the weight of SD2's testimony. Determining the weight of evidence at this stage was premature as that assessment was properly reserved after final submission at the end of the defence case, thereon its weight to be evaluated and considered by this court after juxtaposing it with the evidence proffered by the prosecution. Allowing the prosecution to call a new witness from cybersecurity, to clarify SD2's testimony would essentially be an attempt to revisit and strengthen their own case rather than addressing a truly unforeseen defence. (para 30)

(6) The case of the prosecution rested entirely on circumstantial evidence. While circumstantial, the chain of evidence was sufficiently robust to establish guilt beyond reasonable doubt. The cumulative effect of these circumstances formed an unbroken link pointing inexorably to the accused, leaving no gaps or room for reasonable doubt. Ultimately, the prosecution successfully connected the three crucial elements: motive, opportunity and means. The strength of this chain outweighed the explanations by the defence, which failed to raise a reasonable doubt. (para 35)

Case(s) referred to:
Ashok v. State Of Maharashtra [2015] 4 SCC 393 ***(refd)***
Salem Brayon v. PP [2023] 1 CLJ 739 CA ***(refd)***
Trimukh Maroti Kirkan v. State Of Maharashtra [1935] 10 SCC 106 ***(refd)***
Woolmington v. DPP [1935] AC 462 ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 18(2), (3)
Criminal Procedure Code, ss. 51A(4), (5), 180(1), (3), (4), 182A(1), 289(c), 425
Evidence Act 1950, ss. 7, 32(1)(a), 126
Penal Code, s. 302

For the prosecution - Zaileen Nadia Zubir; DPP
For the accused - Geethan Ram Vincent, Lavanyia Raja & Revin Kumar Shasai Kumar; M/s Geethan Ram Advocates & Solicitor

Reported by Lina E

JUDGMENT

Muniandy Kannyappan J:

Preface

[1] The accused, Chuah Chin Hoe, is charged with murder of his wife, Lau Bee Hong. The offence allegedly occurred on 9 May 2021, between 2.30am and 9.30am at their residence in Prima Setapak Condo, Kuala Lumpur. This offence is punishable under s. 302 of the Penal Code (PC/Act 574), which provides for the death penalty or imprisonment for up to 40 years and whipping of not less than 12 strokes, if not sentenced to death.

Continuation Of Trial

[2] This trial was initially presided over by my predecessor. Upon taking over conduct of the case, I was directed by the then Chief Judge of Malaya to continue the hearing till completion. Both the Deputy Public Prosecutor (DPP) and defence counsel (DC) consented to this mode of proceeding. The DC had obtained instructions from the accused, who had expressed no objection to this mode of trial. Pursuant to s. 18(2) and (3) of the Courts of Judicature Act 1964 (CJA/Act 91), the parties were alerted to their right to recall witness. Notably, the availability of remote video technology (RVT) recording allowed me to observe the live demeanour of witnesses who testified before my predecessor, ensuring a swift and judicially sound transition.

Case Of Prosecution

[3] The prosecution relied on 17 witnesses and a chain of circumstantial evidence to prove its case beyond reasonable doubt from the point of inception of trial till its conclusion. (See the case of *Woolmington v. DPP* [1935] AC 462). However, at the intermediate stage of trial, the prosecution is expected under the law pursuant to s. 180(1) of the Criminal Procedure Code (CPC/Act 593) read together with s. 180(4) of the CPC, to establish or prove a *prima facie* case against the accused. It has to be proved by adducing credible evidence proving each and every ingredient of the offence of murder, as per the preferred charge against the accused. It is a legal norm that credible evidence emanates from credible prosecution (PWs), whose

testimony has to be believed, could be relied on, as it shall be free from reasonable doubt. The quantum of proof adduced has to fulfil proof of all ingredients of the offence of murder, in order for this court to find that a *prima facie* case has been established against the accused and he has to defend himself to the preferred charge.

[4] There were no direct eye witnesses to the crime, thus the reliance by prosecution on the chain of circumstantial evidence to establish its case. At close of the prosecution case, this court has conducted a maximum evaluation of the evidence and found a *prima facie* case established based on the following:

(i) medical evidence: pathologist (SP11) proved the cause of death was asphyxia consistent with smothering. Her evidence is not in isolation, but supported by the testimony of SP8, an odontologist. SP11's evidence is supported by P21, the post-mortem report. Their testimonies stood unrebutted;

(ii) injuries to the lips were consistent with strong pressure from a soft blunt object, such as a blanket and there were no injuries consistent with legitimate CPR attempts;

(iii) the last seen together doctrine: evidence from the children, SP14 and SP17, established that the deceased retired to the bedroom with the accused on the night of the incident on 8 May 2021. No other person was seen entering or exiting the room until the deceased was found dead the next morning. Moreover, individuals present in the household were the couple and their children;

(iv) motive: the prosecution adduced evidence of a soured marital relationship and distress; a pending divorce; financial instability due to the gambling habit of the accused; and the fact that the accused was the sole beneficiary of the deceased's EPF savings totalling RM433,079.90. The deceased had informed her children of her intent to divorce the accused;

(v) divorce and threats: the deceased had filed for divorce. The deceased's lawyer (SP15) testified that the deceased had told the accused she wanted to move out of the matrimonial home. She was worried about his unstable emotions, mentioning she had received threats from her husband. In fact, their son (SP14) had testified that he had previously heard the accused say, if the deceased wanted to move out of the house, they better die together; and

(vi) exclusive opportunity and absence of intruder: the home was occupied only by the accused, the deceased, and their three children. Investigation by SP5 revealed no signs of a break-in at the condominium.

[5] With effective legal representation, the able and diligent counsel for the accused, Geethan Ram, had cross-examined the prosecution witnesses (PWs) at length and with all tenacity. When doing so, he had attempted to dilute the existence and contents of the CCTV recording tendered in court by the prosecution as exh. P19, *via* witness SP9. Ensuing from that, it was contended that they were incomplete recording, as the complete picture of people exiting and entering the condominium unit from all angles at the *locus in quo* was absent. It is submitted that the recording tends to only one particular angle, showing to a very large extent only the accused exiting and entering his unit on the day in question. It is claimed that it does not show any other individual entering or exiting the unit, save for the immediate time after the deceased was found dead, where medical professionals were at the scene. However, this court notes, in terms of proof, if the recording is only such, then it would be what had happened or transpired at the scene of crime, and it cannot be anything more or less, but *status quo*. Aside the said CCTV recording, there is no evidence showing any break-in to the condominium unit, the scene of crime. This is paramount as it was argued that there could have been someone else intruding into the unit and to have violated and terminated the life of the deceased.

[6] The defence had argued that the prosecution has failed to prove a *prima facie* case against the accused. It is contended that the circumstantial evidence is insufficient and does not form a complete chain to bring home the guilt against the accused. Several factors were highlighted to show that a reasonable doubt has been raised and that there was a possibility of a third party involved. In sum, the contention by the defence is that the circumstantial evidence available is insufficient; the murder was unwitnessed, and there is no direct evidence to prove the identity of the person who caused the death.

[7] The factors raised are that the DNA report (P26), testimony of the pathologist (SP11) and the investigating officer (SP16) confirmed the presence of sperm in the body of the deceased. This indicates the deceased had intimate relations with someone before her death. The defence had argued that the individual was not the accused, as it is the version of the prosecution that the couple had a poor relationship, thus raising a question about the identity of the man and his possible involvement in the death of the deceased.

[8] It was also contended that a police report (P20), had mentioned two men, Tan Yuk Huat and Kong Hon Yen, with an allegation that the deceased was having an affair with Tan Yuk Huat. On this the defence had argued that the case investigation officer (IO) (SP16), had failed to conduct any investigation into these individuals, their relationship with the deceased, and whether they had access to the house. Former lawyer for the deceased (SP15) had also confirmed allegations of the deceased having an affair with a third party.

[9] SP15 had also presented a WhatsApp conversation (D51), showing that the deceased had been threatened by a gangster approximately one month before her death. The defence argued this is a co-existing circumstance which would weaken or destroy the inference of guilt of the accused.

[10] The defence had also stated that the IO has failed to investigate other individuals who had access to the house. This includes failing to check for duplicate keys, access *via* the balcony, visitor logs, CCTV footage from the lift lobby/guard house, and access card records. It was also contended that the prosecution has only submitted incomplete CCTV footage (P19), from the corridor camera. It was submitted that the case of the IO when put to him that, due to the missing footage, had said "we don't know who entered the house, who used that route ... and ... someone had entered the house during that time, but we don't know who because there is no CCTV footage ...". Rightly so, as his investigation and answer to the put question is premised on the CCTV footage he had procured in the course of investigation.

[11] To the contrary, the prosecution has contended forcefully that a *prima facie* case has been established against the accused, for the murder of his wife, and that he should be ordered by this court to enter on his defence. To fortify their argument, the post-mortem conducted by the pathologist (SP11) determined the cause of death as asphyxia consistent with smothering and injuries included bruises on the lips, which were consistent with strong pressure from a soft blunt object like a blanket. There were also petechiae (haemorrhagic effect) in the deceased's eye conjunctiva, a sign of suffocation. The doctor (SP8) has also confirmed the bruises on the lips were consistent with pressure on the mouth, forcefully pushing the upper lip downward onto the front teeth. Crucially, there were no injuries to the deceased's chest or ribs that would typically be sustained from attempted cardiopulmonary resuscitation (CPR) by an untrained individual, contradicting any claim that resuscitation caused the injuries. Furthermore, their son (SP14) has testified that bruises were visible before the accused's alleged CPR attempt.

[12] The prosecution had relied on the strong chain of circumstantial evidence to prove that the injury was inflicted by the accused. There was no intruder present as the CCTV footage of the condominium, showed that no one else entered the deceased's unit/home from the night of 8 May 2021 until the morning of 9 May 2021, except for the accused and the deceased. There was also no sign of break-in, which was confirmed by SP5.

[13] This court has conducted a maximum evaluation of all of the above, including the case to the contrary advanced by the defence.

Ruling On Legal Professional Privilege

[14] During the trial, the defence objected to the testimony of SP15, the deceased's divorce lawyer, citing legal professional privilege under s. 126 of the Evidence Act 1950 (EA/Act 56). The defence argued that only the deceased could waive this privilege. This court had ruled that SP15's

testimony was admissible. While s. 126 of the EA generally protects solicitor-client communications, it must be read alongside with s. 32(1)(a) of the EA, which renders statements made by a deceased person regarding the cause or circumstances of their death relevant and admissible. In a murder trial, public interest in the disclosure of such communication, specifically threats allegedly made by the accused, prevails, especially as the deceased is unable to provide consent for waiver. Record of the arguments advanced and ruling made is reproduced below:

For continued trial

SP15 Andy Yeoh

AS in English

Lawyer

I do know the deceased. Lau Bee Hong - my client - sought advice for a divorce matter. She came to my office - sought advice. 1st meeting - husband having issue with her - domestic violence - not taking care of her family - showed me gambling materials - showed materials that she paid the gambling bills. I have not met the husband before.

DC

Professional communication - s. 126 EA Cannot be disclosed in court.

DPP

Section 126 must be read together with s. 8 EA.

Court allows time for DPP and DC, including counsel holding watching brief to do further research on the issue if SP15 could divulge the communication made by deceased to him before she died in view of s. 126 EA, which caters for permitted disclosure only.

DPP agrees to call IO as the next witness and DC agreed to reserve cross-examination.

Untuk hujahan mengenai isu pemanggilan saksi SP15 yang merupakan peguam yang kendalikan kes penceraian simati dan tertuduh. Ada bantahan daripada peguambela.

PB

1. Two issues - on the evidence to be adduced.

2. ...

3. Privileged communication - 126 EA - express consent by the client deceased to waive the privilege.

4. Page 7 of submission - death *per se* does not mean privilege is waived.

5. Objection - is only on the communication between the deceased and advocate.

6. Information given by the deceased could not be verified for purposes of cross-examination.

DC - watching brief

1. Agreed privilege subsists.

2. None of the authorities - deal with the factual matrix of this case.

3. Impossibility of consent - because client is dead.

4. Privilege should be lifted in such circumstance.

5. The court is concerned with the truth.

6. Weight to be attached is a different issue altogether.

7. Petition for divorce had not been filed yet at the point of time.

8. Victim died two weeks after the affidavit affirmed on 23.4.2021; died on 9 May 2021.

DPP

1. Otoriti yang dikemukakan - adalah kes sivil dan bukannya kes jenayah.

2. Seksyen 126 AK - ada dua pengecualian.

3. Terdapat laporan polis oleh simati - exhibit P20.

4. Keterangan adalah penting demi seksyen 5 & 8 AK.

For decision

1. Ruling on testimony of prosecution witness SP15 who is supposed to be the advocate who had handled the divorce petition sought by deceased, wife of accused against the accused person.

2. Reception and admissibility of his evidence is being objected to by defence counsel on the premise that it offends s. 126 Evidence Act 1950 (EA), as it pertains legal professional privilege which is protected under the law from disclosure. That only the deceased wife is able to waive privilege by her express consent, if at all, then it could be disclosed.

After having heard and perused both oral and written submission advanced by counsel for accused and DPP, this court's ruling:

On the testimony of SP15

1. SP15 is an advocate who has handled the divorce petition *cum* case against the accused who is husband of the deceased. His client was the deceased wife.

2. It is trite that pursuant to s. 126 EA, her communication with SP15 is protected from disclosure as legal professional privilege operates against such disclosure.

3. The rationale for such non-disclosure is confidentiality of such communication with SP15.

4. The stark fact is that the client of SP15, who is the wife of the accused, is now deceased, as such she cannot consent to such disclosure in order to waive the privilege prevailing under s. 126 EA.

5. The backdrop against which this issue ought to be decided is:

- The adversary form of justice prevailing in our legal system and conduct of the case is accusatorial in nature and not inquisitorial.
- Entitlement of the prosecution to call any witness who could offer relevant and admissible evidence pursuant to s. 134 and 136(1) EA.
- The fact in issue in the present case, whereby the accused is facing a charge of murder pursuant to s. 302 PC which carries the death penalty; is if the crime of murder is in fact committed and did the accused commit it.
- The accused person is presumed innocent until proven guilty.
- He is entitled through his counsel to cross-examine SP15 in order to test the accuracy, veracity as well as credibility of his testimony, after he has been examined in chief, pursuant to s. 146 EA.

6. It is apparent that the prosecution has embarked on calling for the testimony of SP15, who has in fact taken oath but before testifying, objection was taken by defence counsel pertaining reception of his testimony, in order to adduce evidence in support of the case of prosecution to demonstrate to this court on the circumstances available in the case surrounding the death of the deceased, which is material evidence for the prosecution. It is also in line with the opening statement made by the DPP prosecuting that the prosecution wishes to prove the guilt of the accused in this case, *vide* circumstantial evidence.

7. On that score, the prosecution has deemed it necessary to call SP15 as its witness to prove the communication in question with the deceased in order to establish guilt of the accused who stands charged for the murder of his wife, the deceased.

8. Is the communication a relevant fact under the EA 1950? A survey of s. 32(1)(a) EA will demonstrate so for the reason; subject to the testimony of SP15, oral or verbal statements of deceased to him pertaining to the divorce petition or case are relevant facts in which the cause of her death comes into question.

9. Aside that, subject to the evidence of the testimony of SP15, the circumstance involved pertaining to communication of the deceased with SP15 is also relevant pursuant to the relevancy provisions of the EA, including s. 5 - on the existence of every fact in issue and such other relevant facts; s. 6 - facts which are connected with the fact in issue as to form part of the same transaction are relevant, although it had occurred at a different time before death of deceased; s. 7 - facts which constitute the state of things under which they happened are relevant facts; s. 8(2) - the conduct of any person an offence against whom is the subject of the criminal proceeding, is relevant if the conduct is influenced by any fact in issue or relevant fact, prior to the death of the deceased; s. 9 - facts necessary to explain or introduce a fact in issue or relevant fact to show the relation of parties by whom any such fact was transacted, are relevant so far as they are necessary for that purpose; s. 11(b) - relevant facts if

by itself or connection with other facts, makes the existence of any fact in issue or relevant fact highly probable and s. 14 - facts showing the existence of any state of mind towards any particular person when the existence of any such state of mind is relevant.

10. On that score, the evidence intended by SP15 with regard to the communication he was involved with the deceased wife is admissible under s. 32(1)(a) EA, *albeit* the non-disclosure provision under s. 126 EA.

11. It has to be iterated that s. 32(1)(a) operates independently of s. 126 EA, especially so when the wife of the accused who was in communication with SP15 is now deceased, as her express consent for to waive privilege or to allow disclosure is an impossibility.

12. That in law, shall not deprive the prosecution of proving its case against the accused and public interest would prevail for disclosure of such communication with SP15, in order for the prosecution *vis-à-vis* the State to prove a case of murder against the accused, and the victim herself is the communicator of the information to SP15.

13. On that premise SP15 is allowed by this court to testify for the prosecution and defence is at liberty to cross-examine him on his oral testimony as well as the documentary evidence he may proffer in this case.

[15] In this trial too, the admissibility and weight of IDP19, the CCTV recording from the condominium were central points of contention between the defence and the prosecution.

Admissibility And s. 51A Of The CPC

[16] The defence initially objected to the admission of IDP19, arguing that the prosecution failed to comply with s. 51A(4) of the CPC due to deliberate non-disclosure. The defence noted that while the trial began in October 2022, the recording was only handed over in January 2023. In my ruling, I allowed IDP19 to be admitted as a prosecution exhibit based on the following:

(i) section 51A(5) of the CPC: this provision allows the court to admit documents delivered after the trial starts, provided the accused is given reasonable time to examine them and the right to recall witnesses for further cross-examination;

(ii) custody and source: the prosecution established that they did not receive the recording until 4 January 2023, and therefore, there was no deliberate non-disclosure; and

(iii) witness testimony: the recording was supported by the testimony of SP9, the condominium manager, regarding its existence and the system used.

Evaluation Of The Recording's Integrity

[17] The defence attempted to dilute the weight of this evidence through cross-examination of SP9 and the investigating officer, SP16:

(i) Defence Contention

(a) incompleteness: the defence argued that the footage was incomplete and contained gaps during the material time of the charge, *ie*, 2.30am to 9.30am; and

(b) lack of forensic analysis: it was noted that the IO did not send the CCTV for formal forensic analysis.

Finding

[18] Upon a maximum evaluation, the court found the prosecution's evidence regarding the CCTV compelling because of:

(i) sequential numbering: the prosecution pointed out that the file numbers for 8 May 2021 and 9 May 2021 were in a continuous sequence, which strongly suggested the recordings had not been tampered with or edited.

(ii) consistency: despite the alleged gaps, the available footage consistently showed only the accused, the deceased, and their son entering or exiting the unit.

Conclusion On IDP19

[19] The court ultimately accepted the prosecution's version that the CCTV footage, corroborated by the fact that there were no signs of a break-in, established that the accused had exclusive access to the deceased during the material time. The sequential nature of the files effectively rebutted the defence's theory of tampering or missing intruder footage. The arguments advanced on this issue and this court's ruling is reproduced below:

On the issue of admissibility of IDP 19 DC

1. Date of receipt of CCTV recording - 4.1.2023.

2. 51A documents furnished - 11.10.2022.

3. CCTV recording was handed over to DC on 6.1.2023.

4. 8 witnesses have to be recalled.

5. PW9 - who intends to adduce evidence on IDP19 - who said the CCTV was handed over in May 2021.

6. Trial started in October 2022.

7. 51A (4) - there was deliberate non-disclosure.

DPP

1. IDP19 was tendered through SP9 - it was played in open court - TJ 1 decided to only mark it as identification exhibit and for a ruling on it to be made at the end of the prosecution case.

2. Prosecution intends to tender it *via* the IO of case - premised on custody of the exhibit. Weight of the evidence is still an issue to be decided by this court.

3. Tendered in court for corroboration purposes.

4. Prosecution did not have the CCTV recording until 4.1.2023.

5. There is no deliberate non-disclosure.

6. Prosecution sought to introduce IDP19 *via* IO premised on custody of the intended exhibit.

7. On the contents of IDP19, prosecution would rely on the testimony of other witnesses as point of corroboration.

DC

1. Reliance on written submission.

DC - watching brief

1. No prejudicial effect on the accused - accused can be given the right to cross-examine.

2. *PP v. Ong Cheng Heong* - no prejudice occasioned - defence can still put forth their defence.

3. CCTV ought to be considered by this court.

For decision

The other piece of evidence objected to from it being admitted as evidence in court is the CCTV recording IDP19. It was purportedly taken in front of the apartment near the lift where the accused and deceased have been residing. It is objected to from being marked as prosecution exhibit as there has been a deliberate non-disclosure pursuant to s. 51A(4) CPC.

After having heard and perused both oral and written submission advanced by counsel for accused and DPP, this court's ruling:

On the admissibility of IDP 19

1. Surveying s. 51A CPC, the legal provision which would militate against the application of s. 51A(4) CPC, is s. 51A(5) CPC which renders that where IDP 19 is delivered to the accused after the commencement of trial, this court shall allow the accused reasonable time to examine the CCTV recording as well as to preserve the right of the accused to recall and examine any of the prosecution witness in relation to the reception and admissibility of IDP 19.

2. The DPP has made her stand clear as to the following:

- IDP19 was tendered through SP9 - it was played in open court - TJ 1 decided to only mark it as identification exhibit and for a ruling on it to be made at the end of the prosecution case.
- Prosecution intends to tender it *via* the IO of case - premised on custody of the exhibit. Weight of the evidence is still an issue to be decided by this court.

- Tendered in court for corroboration purposes.
- Prosecution did not have the CCTV recording until 4.1.2023.
- There is no deliberate non-disclosure.
- Prosecution sought to introduce IDP19 *via* IO premised on custody of the intended exhibit.
- On the contents of IDP19, prosecution would rely on the testimony of other witnesses for corroboration.

3. Production of the CCTV recording too fits in s. 60(3) EA as the oral evidence tendered by SP9, refers to the existence of the CCTV recording.

4. On that premise, IDP 19 is allowed by this court to be tendered through the investigation officer of the case as a prosecution exhibit, and the accused *via* his counsel is at liberty to recall any of the PWs to be further cross-examined in relation to the document.

Issues For Determination

[20] Issues to be decided by this court are:

(i) did the murder take place?

(ii) did the accused commit murder?

Alongside, other issues which has also to be considered are:

(i) is there credible evidence to prove the accused did commit murder of the deceased, Lau Bee Yong?

(ii) was there any other individual present or involved who could have killed the deceased?

(iii) what is the effect of the medical evidence available, which point conclusively to asphyxia consistent with smothering?

Finding At The Close Of Prosecution Case

[21] At the close of the case of prosecution, on a maximum evaluation of all the evidence tendered by the prosecution which was subjected to vehement cross-examination by the accused, and the case and explanation to the contrary advanced to this court by the defence, this court is able to conclude without any doubt that the accused was the last person together with his wife, now deceased, in their room the night and the morning before she was found dead. The chain of circumstances relied on by the prosecution as proof against the accused, is only compelling against the accused, which calls for this court to order the accused to enter on his defence to the preferred charge.

[22] On that premise, this court had ordered so, pursuant to s. 180(3) of the CPC. Options in law available to the accused on the mode and manner of defending himself was explained to him in the language he understands, and

with advice of his counsel, he chose to testify from the witness box and to also call other witnesses to support his defence. In fact, I have rendered brief grounds of judgment when ordering the accused to enter on his defence, which is the following. The trial then proceeded to the defence stage:

PP v. Chua Chin Hoe

For decision at the end of case of prosecution DPP Zaileen Nadia for prosecution

DC Geethan Ram together with Lavinya Raja and Raveen Kumar for the accused.

Accused present.

Brief grounds of judgment read out in open court.

1. The accused in this case is alleged to have murdered his wife on 9 May 2021. It is an offence punishable under s. 302 of the Penal Code on conviction. Time range provided in the charge is from 2.30 am to 9.30 am. Place of crime is at their home in a bedroom at a Condominium Unit at C-6-2, Prima Setapak Condo, Jalan Genting Klang, Setapak.

2. A total of 17 witnesses offered evidence for the prosecution.

3. The duty of the prosecution is to prove its case beyond reasonable doubt from inception of trial till its conclusion.

4. At this intermediate stage, the prosecution pursuant to s. 180(1) CPC read together with 180(4) CPC, is required under the law to establish or prove a *prima facie* case against the accused, sufficient enough for the accused to defend himself to the charge for an offence of murder pursuant to s. 302 of the Penal Code. In proving a *prima facie* case, the prosecution has to offer credible evidence supporting the ingredients of the charge which shall be believable evidence free from reasonable doubt.

5. In the present case, the prosecution is unable to prove *via* direct evidence that it was the accused who had caused the death of his wife, as there are no eye witnesses to the alleged crime.

6. Available is only circumstantial evidence entailing a chain of circumstances, if viewed cumulatively and in totality must have the effect of amounting to proof consistent with the guilt of the accused *vis-à-vis* the crime alleged against him.

7. Cause of death of the deceased is proven by SP11 to be by "asphyxia consistent with smothering". Her evidence is supported by her post-mortem report P21. SP11's evidence is also supported by the evidence of an odontologist SP8. This stands unrebutted.

8. The house in which the alleged crime had taken place, at the material time is lived in by the accused being the husband *cum* father and head of the household, his wife the deceased and their three children and no one else.

A

9. Before the fateful incident, on the night before, SP14 their son had testified that the deceased had told him and his siblings that she is parting with their father by divorcing him and had sought to find out from them, who do they wish to follow.

10. After the conversation, the deceased is said to have retired to bed with her husband to another room. So, there was no more communication amongst the children and their parents, including the deceased after that.

B

11. The next morning their mother was found dead in the room. P6 is testimony to that.

C

12. The accused together with his sons had taken steps to call for assistance and in fact the accused had attempted to resuscitate his deceased wife, with a view to see her alive, if he could. These steps and endeavour taken by the accused is contended to be pointing towards his innocence and not to be criminally culpable to cause the death of his wife, the deceased.

D

13. The accused *via* his able and diligent counsel *via* cross-examination of the witnesses for prosecution, had attempted greatly to dilute the existence of the CCTV recordings tendered in court as exhibit P19, through witness SP9. He had contended vehemently that they were awfully incomplete, as the recordings shown do not complete the picture of people exiting and entering the condominium unit, which is the *locus in quo* from other angles. The recording tendered only shows one particular angle, which to a large extent showing the accused exiting and entering his unit on the day in question. However, the recording does not show of any other individual entering or exiting the unit, save for the time post the deceased found dead, which was for medical assistance. There is also no evidence of break in at the said unit.

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14. At the end of the case of the prosecution with the evidence tendered, which this court had viewed it in totality and gave it a maximum evaluation, concludes that the accused was the last person together with his deceased wife in their room the night before and on the morning after she was found dead. In the chain of circumstances relied on by the prosecution to prove the charge against the accused, this chain of circumstance is the most compelling. It is a material consideration as a circumstance against the accused.

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15. It *per se* calls for an explanation by the accused.

16. Therefore, this court decides to order the accused to enter his defence to the charge preferred against him pursuant to s. 180(3) CPC.

I

17. Options read and explained to the accused.

18. He decides to testify from the witness box and to call another two witnesses.

Case Of The Defence And Evaluation

[23] The accused (SD1) testified from the witness box and called a CCTV expert (SD2). The defence focused on these contentions to create reasonable doubt:

(i) identity of the deceased unascertained: there is no evidence on the identity of the deceased *vide* proper identification documents;

(ii) possibility of a third-party access: the defence argued that gaps in the CCTV footage and the possibility of entry *via* balcony suggested an intruder could have committed the crime;

(iii) third-party involvement: the defence highlighted the presence of another individual's sperm in the deceased's body and alleged threats from a gangster prior to her death. They also suggested possible access *via* the balcony;

(iv) challenge to CCTV integrity: SD2 testified the recording was time-based rather than motion-based and suggested that the CCTV footage (P19) was incomplete, missing crucial timeframes and contained time gaps during the material window of the charge;

(v) alternative explanation: the accused claimed his presence at the casino was work-related; and

(vi) innocent conduct: the accused contended that his attempts to resuscitate the deceased demonstrated a lack of criminal culpability, thus pointing to his innocent conduct.

Findings Of The Court At The Conclusion Of Trial

[24] Upon a maximum evaluation of all the evidence adduced in the case, pursuant to s. 182A(1) of the CPC, this court shall consider and decide whether the prosecution has proved its case beyond reasonable doubt or in other words, if the defence has been successful in raising a reasonable doubt on the proven case by the prosecution. My evaluation and consideration follow as below:

Identity Of The Deceased

[25] This court finds there is no failure by the prosecution to prove the identity of the deceased. It is perfectly clear that reliance is on the sons' testimony identifying the victim as their mother, Lau Bee Hong, despite the lack of formal police documentation, *to wit* identification card or death certificate or fingerprint analysis. The combined oral or verbal evidence from the family deemed cogent and sufficient to prove identity.

Rejection Of The CCTV And Intruder Theories

[26] This court finds the CCTV arguments raised by the defence unpersuasive. While SD2 suggested the recording was incomplete, he admitted he did not physically inspect the system's hardware, *ie*, NVR or

hard disk. Conversely, the prosecution demonstrated that the CCTV file numbers were in sequence, strongly indicating that no tampering or editing had occurred. The theory of an intruder entering *via* a 12-inch gap through the balcony or during gaps in the footage is dismissed as mere conjecture. There were no signs of a break-in.

Application Of the "Last Seen Together" Doctrine

[27] Cornerstone of this judgment is the last seen together theory. The doctrine applies on all fours to this case. The accused was the last person with the deceased in a locked bedroom before she was found dead the next morning. Under this doctrine, as elucidated in the case of *Ashok v. State of Maharashtra* [2015] 4 SCC 393 and *Trimukh Maroti Kirkan v. State of Maharashtra* [2006] 10 SCC 106, when a murder occurs in a shared dwelling, the husband must explain how the injuries occurred. Failure to offer a plausible explanation gives rise to a strong presumption that the accused is responsible. Following *Salem Brayon v. PP* [2023] 1 CLJ 739; [2023] 1 MLJ 441, the burden shifted on to the accused to proffer a cogent explanation to rebut the inference of guilt by affording a plausible explanation as to how his wife was smothered while alone in the room with him. The following is the excerpt from the case of *Salem Brayon v. PP* [2023] 1 CLJ 739; [2023] 1 MLJ 441, where the court had the opportunity to deal with the same issue and explained as follows:

> [53] Our attention was drawn to the Indian Supreme Court decision of *Ashok v. State of Maharashtra* [2015] 4 Supreme Court 393 where the Supreme Court of India held that:
>
> > The "last seen together" theory has been elucidated by this court in *Trimukh Maroti Kirkan v. State of Maharashtra* [2006] 10 SCC 106, in the following words:
> >
> > > Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer an explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. Thus, the doctrine of last seen together shifts the burden of proof on the accused, requiring him to explain how the incident had occurred. Failure on the part of the accused to furnish any explanation in this regard, would give rise to a very strong presumption against him.
>
> [54] Under the circumstances of this case where, in our view, the 'last seen together' theory applies, the burden shifted to the appellant to proffer a strong and cogent explanation and rebut the presumption that his act or

series of acts led to the deceased's death and the inference that he committed the acts. The absence of such an explanation would be detrimental to his defence (see *Nika Ram v. State of HP* [1972] 2 SCC 80; *Kanhaiya Lal v. State of Rajasthan* [2014] 4 SCC 715).

[28] In the present case, the accused has failed to provide a plausible explanation, instead was fabricating an alibi and story of a third-party intruder into their bedroom. Hence, the inference is that the accused committed the act of killing the deceased alleged against him, and also leading to a strong presumption against him. This court also notes that the presence of sperm or outside threats lacked a direct link to the specific act of murder in the bedroom.

Credibility And Contradictions

[29] The credibility of the accused was severely undermined by material contradictions between his police statement (D9), and his witness statement (PSD1), regarding his wake-up and return times on the morning of the incident. His initial lie regarding his last casino visit, claiming April instead of 6 May, suggests an attempt to hide a financial motive. These inconsistencies suggest a blatant lie and a deliberate attempt to fabricate an alibi.

[30] In the final stage of the trial, after the defence had closed its case with the testimony of the accused, SD1 and the CCTV expert SD2, the prosecution applied to call rebuttal evidence. This application was made specifically to rebut the findings of the defence expert regarding the CCTV recordings. I delivered a formal ruling on 29 October 2024, refusing the application by the prosecution. The grounds for this decision were as follows:

Grounds For Refusing Rebuttal Evidence

(i) purpose of rebuttal: I emphasised that calling rebuttal evidence under s. 425 of the CPC is not a tool to be used willy-nilly. It is only appropriate when the evidence tendered by the defence was unforeseeable by the prosecution at the outset;

(ii) availability of evidence: the documentary proof, exhs. D44 and D45 commented upon by SD2 had already emerged during the prosecution stage of the trial. Therefore, the basis of the defence's testimony was not a surprise that necessitated rebuttal;

(iii) prematurity: the prosecution's arguments focused heavily on the weight of SD2's testimony. I ruled that determining the weight of evidence at this stage was premature, as that assessment is properly reserved after final submission at the end of the defence case, thereon its weight to be evaluated and considered by this court after juxtaposing it with the evidence proffered by the prosecution; and

(iv) interest of justice: it was determined that allowing the prosecution to call a new witness from cybersecurity to clarify SD2's testimony would essentially be an attempt to revisit and strengthen their own case rather than addressing a truly unforeseen defence.

[31] This ruling ensured that the trial remained procedurally fair and did not allow the prosecution an unfair advantage to fill gaps in their case after the defence had rested. Consequently, the case proceeded to the final written and oral submissions based on the existing evidence. The arguments advanced on that issue and the ruling made by this court is reproduced below:

29.10.2024

PP v. Chuah Chin Hoe

For ruling

On calling of rebuttal evidence by Prosecution

Parties present as recorded.

Brief grounds of judgment read out in open court.

1. Stage of trial of the case is end of defence, wherein the accused has testified as SD1 and his witness SD2.
2. The witness SD2 testified on the findings he has made in relation to D44 and D45 tendered by the defence.
3. After completion of his testimony in court, the DPP having conduct of the prosecution applied to have rebuttal evidence called in order to rebut the testimony of SD2 on the CCTV recording.
4. I have asked parties to submit on the issue. Both written and oral submission were made by parties.
5. Surveying the submission by the prosecution, it is apparent that the weight of SD2's testimony is submitted upon, which could also be done at the end of the defence case.
6. It would be premature for this court to decide on the weight of SD2's testimony in the case as the trial has not been concluded, since submission at the end of defence case has not been heard.
7. But instead, the DPP has taken a stand that evidence in rebuttal ought to be called to rebut the testimony of SD2, in the interest of justice pursuant to s. 425 of the CPC.
8. Calling of rebuttal evidence by the prosecution, could not be made willy-nilly by the prosecution but only appropriately, when the evidence tendered by the defence was not foreseeable by the prosecution at its outset and not to revisit the testimony of SD2 with regard to the basis of his testimony and its content. It has to be emphasized that documentary proof *vide* exhibit D44 and D45 have emerged at the trial at the prosecution stage of the case, which was commented upon in detail by SD2 in his testimony.

9. What the prosecution attempts to do, is exactly that, when their submission starts with the weight of SD2's testimony followed by the intended clarification by another witness purportedly from Cybersecurity on SD2's testimony.

10. That cannot be the intent or purport of calling rebuttal evidence and also the applicability of s. 425 of the CPC.

11. In that respect, the application by the prosecution is refused by this court.

12. This court will continue to try the case by ordering parties to file and serve written submission.

Case of defence closed.

[32] Ensuing from all of the above, the defence concludes that the prosecution has failed to prove a case beyond reasonable doubt against the accused, and the accused has successfully raised a reasonable doubt in the proven case of the prosecution, thus he ought to be acquitted and discharged.

[33] However, before the accused was found guilty and convicted by this court, all detailed submissions advanced by the defence and prosecution was meticulously combed through together with the testimony of all the witnesses who have testified.

[34] Ultimately, this court as alluded to above, has to embark on a maximum evaluation of all the evidence adduced in the case, pursuant to s. 182A(1) of the CPC and how the burden of proof was ultimately met by the prosecution, focusing on the strength of the circumstantial evidence.

Conclusion Of Guilt

Circumstantial Evidence

[35] The case of prosecution rests entirely on circumstantial evidence. While circumstantial, the court finds the chain of evidence sufficiently robust to establish guilt beyond a reasonable doubt. The cumulative effect of these circumstances forms an unbroken link pointing inexorably to the accused, leaving no gaps or room for reasonable doubt. Ultimately, the prosecution successfully connected the three crucial elements: motive, opportunity, and means. The strength of this chain outweighs the explanations by the defence, which failed to raise a reasonable doubt.

Opportunity And the Last Seen Theory

[36] Under s. 7 of the EA, and illustration (c) the element of opportunity is a critical factor. It renders the following:

> Facts which are the occasion, cause or effect, immediate or otherwise, of relevant facts or facts in issue, or which constitute the state of things under which they happened or which afforded an opportunity of their occurrence or transaction, are relevant.

A Illustration (c)

The question is whether A poisoned B

The state of BS health before the symptoms ascribed to poison and habits of B, known to A, which afforded an opportunity for the administration of poison are relevant facts.

B The court observes the following:

(i) exclusive access: the accused had the sole opportunity to commit the crime. Testimony from the children (PW14 and PW17) confirms the accused was the last person to enter the bedroom with the deceased on
C the night of 8 May 2021;

(ii) the "last seen together" doctrine: this doctrine establishes that the accused, being the last person with the deceased at the material time, must explain his presence. He remained in the bedroom with her throughout the night until her body was discovered the next morning;
D and

(iii) exclusion of others: investigation by SP5 and CCTV footage confirmed no signs of a break-in or any other individual entering the premises. This effectively excludes any third party and identifies the accused as the only
E person with the opportunity to inflict the fatal injury.

Medical Evidence And The Means Of Death

[37] The medical findings directly support the prosecution's theory of the case:

F (i) cause of death: the post-mortem by SP11 confirmed death by asphyxia, consistent with smothering *via* a soft blunt object like a blanket;

(ii) contradictory findings: the absence of CPR-related injuries contradicts any suggestion that the trauma was the result of an attempted resuscitation; and

G (iii) inference: such an injury could readily have been inflicted by the accused while the deceased was alone and helpless in the room with him.

Motive: Financial And Relational Distress

H **[38]** The court finds a compelling and rational basis for the crime rooted in the accused's personal and financial circumstances:

(i) marital tension: the deceased had filed for divorce and previously lodged a police report expressing fear for her life. While not a proof for a prior assault, this report is admissible to demonstrate the strained relationship
I and the accused's state of mind;

(ii) financial dependency: the accused was unemployed and financially dependent on the deceased, who was the sole breadwinner;

(iii) financial gain: the accused was the sole beneficiary of the deceased's EPF fund, totalling RM433,079.90. The prospect of this financial windfall, coupled with a looming divorce, provided a strong inference of motive; and

(iv) gambling habits: despite his denials, evidence (exh. P36) showed a casino visit just two days before the murder, reinforcing a picture of financial stress.

Credibility And Conduct Of The Accused

[39] The accused's veracity is severely undermined by significant contradictions in his evidence:

(i) timeline inconsistencies: there are multiple contradictions regarding his movements on the morning of 9 May 2021, particularly between his police statement (D9), his witness statement, and the CCTV footage;

(ii) fabrication of evidence: the court views the accused's witness statement, given years later as a deliberate afterthought and a reconstruction designed to fit the CCTV evidence; and

(iii) inference of guilt: these blatant lies and attempts to mislead the court regarding his movements further strengthen the inference of guilt.

[40] Based on totality of the evidence, this court finds that the prosecution has successfully established an unbroken chain of circumstantial evidence that points inexorably to the guilt of the accused. The cumulative effect of the accused's exclusive opportunity, the clear financial and relational motives, and the medical evidence regarding the nature of the injury creates a compelling and rational basis for conviction. This court also finds the following points particularly damning:

(i) exclusive opportunity: the accused was the sole adult present, and the last person seen with the deceased before her death, effectively excluding any other individual from committing the offence;

(ii) motive and intent: the combination of a souring marital relationship, a pending divorce, and the accused's position as the sole beneficiary of a substantial EPF windfall provides a clear and powerful motive; and

(iii) lack of credibility: the significant and deliberate contradictions in the accused's timeline, labelling his later accounts as mere afterthoughts to fit the CCTV evidence, severely undermine his veracity and support an inference of guilt.

The explanations and defence advanced by the accused are unpersuasive and fail to raise any reasonable doubt in the prosecution's case.

[41] The above circumstantial chain *to wit*, motive; exclusive opportunity; and the violent nature of the death; remains unbroken. The evidence tendered by the prosecution forms an unbroken chain pointing exclusively to the accused. That coincides with the law, as circumstantial evidence is evidence of facts from which the fact in issue could be inferred. In this case, the fact in issue is if the offence of murder was committed, and did the accused commit it. In the present case, as elaborated above, the chain of circumstances has been proved by the prosecution and without any doubt, this court is able to draw from them the necessary logical inferences and presumption. Thus, it is decided that the prosecution has proven its case beyond reasonable doubt. The accused is hereby found guilty and convicted of the preferred charge against him. I have rendered brief grounds of judgment at the conclusion of trial, which is reproduced below:

PP v. Chua Chin Hoe

For decision at the end of case of defence.

Parties present as recorded.

Accused present.

Broad grounds of judgment read out in open court.

[1] The accused in this case is alleged to have murdered his wife on 9 May 2021. It is an offence punishable under s. 302 of the Penal Code on conviction. Time range provided in the charge is from 2.30 am to 9.30 am. Place of crime is at their home in a bedroom at a Condominium Unit at C-6-2, Prima Setapak Condo, Jalan Genting Klang, Setapak.

[2] A total of 17 witnesses offered evidence for the prosecution.

[3] The duty of the prosecution is to prove its case beyond reasonable doubt from inception of trial till its conclusion.

[4] The prosecution pursuant to s. 180(1) CPC read together with 180(4) CPC, has proven a *prima facie* case against the accused, thus the accused was ordered to defend himself to the charge for an offence of murder pursuant to s. 302 of the Penal Code. In that respect, the prosecution has offered credible evidence supporting the ingredients of the charge which is believable and free from reasonable doubt.

[5] In the present case, the prosecution is unable to prove *via* direct evidence that it was the accused who had caused the death of his wife, as there are no eye witnesses to the alleged crime.

[6] Available is only circumstantial evidence entailing a chain of circumstances, if viewed cumulatively and in totality must have the effect of amounting to proof consistent with the guilt of the accused *vis-à-vis* the crime alleged against him.

[7] Cause of death of the deceased is proven by SP11 to be by "asphyxia consistent with smothering". Her evidence is supported by her post-mortem report P21. SP11's evidence is also supported by the evidence of an odontologist SP8. This stands unrebutted.

[8] The house in which the alleged crime had taken place, at the material time is lived in by the accused being the husband *cum* father and head of the household, his wife the deceased and their three children and no one else.

[9] Before the fateful incident, on the night before, SP14 their son had testified that the deceased had told him and his siblings that she is parting with their father by divorcing him and had sought to find out from them, who do they wish to follow.

[10] After the conversation, the deceased is said to have retired to bed with her husband to another room. So, there was no more communication amongst the children and their parents, including the deceased after that.

[11] The next morning their mother was found dead in the room. P6 is testimony to that.

[12] The accused together with his sons had taken steps to call for assistance and in fact the accused had attempted to resuscitate his deceased wife, with a view to see her alive, if he could. These steps and endeavour taken by the accused is contended to be pointing towards his innocence and not to be criminally culpable to cause the death of his wife, the deceased.

[13] The accused *via* his very able and diligent counsel *vide* cross examination of the witnesses for prosecution, had attempted greatly to dilute the existence of the CCTV recordings tendered in court as exhibit P19, through witness SP9 as well as now in the case of the accused *via* SD2. He had contended vehemently that they were awfully incomplete, as the recordings shown do not complete the picture of people exiting and entering the condominium unit, which is the *locus in quo* from other angles. The recording tendered only shows one particular angle, which to a large extent showing the accused exiting and entering his unit on the day in question. However, the recording does not show of any other individual entering or exiting the unit, save for the time post the deceased found dead, which was for medical assistance. There is also no evidence of break in at the said unit.

[14] At the end of the case of the prosecution with the evidence tendered, which this court had viewed it in totality and gave it a maximum evaluation, concludes that the accused was the last person together with his deceased wife in their room the night before and on the morning after she was found dead. In the chain of circumstances relied on by the prosecution to prove the charge against the accused, this chain of circumstance is the most compelling. It is a material consideration as a circumstance against the accused.

[15] Pursuant to that the accused has offered his explanation to defend himself to the preferred charge against him. He decided to testify from the witness box and to call another witness.

- It is his testimony that on the date in question, he left the house to go to the market.
- There is no evidence from the PWs that the deceased was hit.
- The pivotal issue is access to the house and that the prosecution has failed to prove other's access.
- The IO, SP16 confirms someone else may have entered the house.
- It is contended the IO was not re-examined on this issue that somebody else may have entered the house.
- It is also contended that the keys kept by the deceased was not found.
- That there is possibility of access *via* balcony *vide* cross examination of SP16, wherein a theory was postulated that there is a possibility of hopping in from one balcony to another, which measures 12 inches between the house.
- The issue on CCTV recording was raised vehemently, *inter alia*, the IO has confirmed, the CCTV was obtained and not sent for forensic analysis.
- It is a continuous recording and some files are missing.
- Therefore, access to the house by someone else cannot be ruled out.
- SD2 has testified that, if it is motion-based censor, time before and after recording would be consistent but here it is not the case.
- The time has been different; thus, it is not a motion-based recording but a time-based recording.
- Time frame mentioned in the charge has no corresponding CCTV recording.
- There was numerous recording with no movement, *vide* D45 shown to court.
- There is shown D64, where for that time frame, no CCTV recording provided. This according to counsel for the accused, ought to be considered as to why was the time frame not provided, not analysed and determined.
- Further conduct of the accused person who had made attempts to resuscitate the wife was contended to be considered by this court.

- That he is a loving person, who does not hit the wife, conversation between the accused and the deceased wife discerned from the WhatsApp conversation shows that the deceased had informed her lawyer that the husband is showing love, which is crucial.
- It was also contended that the CCTV recording at the entire building was not produced and if produced would have shown access by other people to the premises.
- The CCTV recording provided was incomplete and conduct of the accused person had been innocent. It is also contended that the credibility of SD2 was not challenged, therefore deemed accepted by the prosecution and it creates a doubt on the case of prosecution.

[16] In conclusion, it is submitted that the testimony of the accused, SD2 when seen in the light of the PWs has certainly raised a doubt thus the accused ought to be acquitted and discharged.

[17] By way of reply the DPP had submitted that the testimony by SD1 in his WS and oral testimony smack on discrepancies, when compared to the police report made *vide* D9. It is also submitted that SD2's evidence has to be juxtaposed with the testimony of SP5 whom testified on the CCTV recording.

Findings of this court:

[18] Guilt alone cannot be inferred from the conduct, but got to be viewed from the surrounding circumstances.

[19] As for the CCTV recording, it is the duty of this court to evaluate the testimony of SD2 who had not examined or inspect the hard disc. He had also confirmed in his testimony during cross-examination, that the recordings were not modified, he had testified "saya tak dapat buat kesimpulan samada ada suntingan dibuat ...

[20] The files for 8th and 9th May are found to be in sequence, therefore no tempering. SD2 could not ensure if there is tempering.

[21] Juxtaposed with the testimony of SP5, who has verified and confirmed that she has access to the CCTV recording, who knew the working and system used, had confirmed that the CCTV footage given was not tempered or edited in any way.

[22] Thus, the testimony of both the accused and SD2 does not have the effect of raising a reasonable doubt on the case of prosecution.

[23] In the present case the accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together and the offence had taken place in the dwelling home where the accused husband also normally resided, he being the master of the house. In fact, the deceased was found dead on the bed, before which it was undenied he had been sleeping with her in the same room and on the same bed.

A [24] The accused has failed to offer an explanation how the wife received injuries when she was with him all night long before the occurrence took place.

[25] The explanation offered is found to be not plausible, leading to a strong circumstance indicating that he is responsible for commission of the crime. Thus, as this court has applied, the doctrine of last seen together applies on all fours to the facts and circumstances of the case necessitating burden of proof on him to explain how the incident had occurred, which the accused has failed to furnish an explanation, thus giving rise to a very strong presumption against him.

C [26] On that score, at the conclusion of the trial, pursuant to s. 182A of the CPC, after having considered all the evidence adduced in this case, the prosecution has proved its case against the accused on the preferred charge for an offence of murder beyond reasonable doubt. It follows that the accused is found guilty and convicted on the charge for an offence of murder.

D [27] I shall hear his plea in mitigation before this court metes out an appropriate sentence.

For plea in mitigation.

DC

E

1. Hujahan bertulis yang ringkas telah disediakan.
2. Hukuman - Hukum mati atau hukuman penjara selama 30 hingga 40 tahun dan sekiranya tidak ada hukuman mati untuk disebat sebanyak 12 kali.

F

3. Tertuduh kini berumur 51 tahun - tidak boleh disebat - 289 (c) KTJ.
4. Umur 51 tahun - penyelia pengubahsuaian rumah - 3 anak lelaki yang masih belajar.
5. Anak lelaki kedua - telah meninggal dunia.

G

6. Tertuduh berkemurungan - selepas anak lelaki meninggal dunia.
7. Ada "high blood pressure" dan "gastric"
8. Mohon hukuman pemenjaraan tanpa sebatan diperintahkan.

H

9. Tiada senjata yang digunakan.
10. Mohon hukuman penjara yang paling minima.
11. Sekiranya hukuman mati dikenakan - anak-anak akan menjadi yatim piatu.

DPP

I

1. No submission filed.
2. Consideration has to be public interest - and the victim's family.

3. A heinous crime committed by the accused against his own wife.

4. Harmed his own wife.

5. No element of provocation at the time of offence - no argument that the night before the tragedy took place - not a crime of passion - but a pre-planned offence.

6. There were threats leading up to the commission of the offence.

7. Imprisonment is 30 to 40 years - pray for 40 years imprisonment if not death.

DC - watching brief - seek leave of the court for the victim's sister and the son to advance a victim impact statement to the court.

Court - allows the application pursuant to s. 183A of the CPC.

Lau Bee Kuan

AS dalam BM

47 tahun

Bekerja - freelance.

VIS pertama dibacakan dalam mahkamah oleh kakak kepada simati.

Ditandakan sebagai VIS 1 - tarikh hari ini - 27.3.2025.

VIS kedua dibacakan dalam mahkamah oleh anak kepada simati, masih belajar di sekolah - Tingkatan LIma - SMJK Chong Hwa KL. Ditandakan sebagai VIS 2 - tarikh hari ini - 27.3.2025.

VIS dibaca dari handphone - dicetak oleh JB Mahkamah - dikemukakan dan ditandakan sebagai VIS 2.

Counsel holding watching brief allowed to submit -

1. The second son committed suicide - jumped out of a moving vehicle.

2. It is not a mitigating factor - is the action of the accused - drove the second son to suicide - it is a great insult to the victim's family.

DC

1. When the accused is released from prison - he would pass the age and be an old man

2. Demise of the second son - he is also the son of the accused person.

3. The accused has lost a family member in the midst.

DPP

1. Gravity of the offence - for the court to mete out the most appropriate sentence.

Accused

1. My children are too young and they are not left behind.
2. Taking care of them all the while when I was outside.
3. My children are brainwashed and poisoned by certain people.
4. There are things beyond this case.
5. They are looking for the money - for everything to be transferred to the mother of the deceased - even now I cannot proof - they are stealing lots of monies from my family - they use it for themselves and not for my children - worried of my living sons with the family - hope my sons would be looked after by my family - pray for a minimum sentence for this case.
6. Nothing to proof of my involvement.
7. Unknown semen found in the deceased.
8. Hope for now - my condition is considered and the fate of my two children.

Court

After having considered the following factors:

1. Punishment provided under the law
2. Plea in mitigation by the accused *via* his counsel
3. Aggravating factors by the prosecution
4. VIS by both family members 5. Submission by counsel holding watching brief.
6. Plea by the accused personally

Sentence

Proportionate to the commission of the crime, the facts and circumstances of the case this court sentences the accused to a period of thirty (30) years imprisonment to take effect from the date of arrest.

Sentence And Justification

[42] This court has considered the mitigation plea by the defence, the aggravating factors cited by the prosecution, and the victim impact statements (VIS) provided by the deceased's sister and son which highlights the profound trauma inflicted upon the family. The accused is thereafter

sentenced to 30 years of imprisonment, commencing from the date of arrest. No whipping is ordered as the accused has passed the age of 50 years, pursuant to s. 289(c) of the CPC.

Justification For Sentence

[43] While the offence of murder carries the possibility of the death penalty, this court exercises its discretion to only impose a custodial sentence.

(i) proportionality: a sentence of 30 years imprisonment is proportionate to the gravity of the crime;

(ii) nature of the crime: the murder was a heinous act committed against a spouse who was the family's sole breadwinner. It was committed against a spouse in the sanctity of the matrimonial home;

(iii) lack of provocation: the evidence suggests the act was not a crime of passion but a calculated response to a soured marital relationship, pending divorce and financial gain;

(iv) public interest: the court must weigh the interest of the victim's family and the public against the accused's personal circumstances; and

(vi) mitigation factors against aggravating factors: While the defence cited the age of the accused, 51 years old and health issues, the prosecution has emphasised the lack of provocation and the pre-planned nature of the offence involving prior threats. This court notes his age and that he has no prior criminal record. However, his personal plea regarding his children is weighed against the fact that his actions have left them without a mother.

Sentence

[44] Ensuing from the above, this court has sentenced the accused to 30 years of imprisonment to take effect from the date of arrest. No whipping is ordered.

[45] Accused convicted of the offence of murder and sentenced accordingly.